

Notice of Allowability

Application No.

10/607,103

Applicant(s)

LEVY ET AL.

Examiner

Keith O. Robinson, Ph.D.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Amendment filed on October 17, 2005.
2. ☒ The allowed claim(s) is/are 1-6, 9-15 and 19-20, re-numbered as 1-15, respectively.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>12212005</u> . |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date <u>October 25, 2005</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Martin Moynihan on December 28, 2005.

IN THE CLAIMS:

Claim 1 was amended to read: 1. (Currently amended) A paprika plant, or [its parts] a part thereof, the paprika plant being characterized by fruits having a total carotenoids content higher than 10 mg/g dry fruit weight and a branching pattern suitable for mechanical harvesting, wherein the paprika plant is [(i)] *Capsicum annuum* cv. 1056 or 1057, representative seeds thereof having been deposited under ATCC Accession Nos: PTA-5147 or PTA-5148, respectively.

Claim 10 was amended to read: 10. (Currently amended) A tissue culture of regenerable cells [of] produced from the paprika plant of claim1.

Claim 11 was amended to read: 11. (Currently amended) The tissue culture of claim 10, wherein the tissue culture regenerates plants having all the morphological and physiological characteristics of the paprika plant, *Capsicum annuum* cv. 1056 or 1057,

representative seeds thereof having been deposited under ATCC Accession Nos: PTA-5147 or PTA-5148, respectively.

Claim 12 was amended to read: 12. (Currently amended) The tissue culture of claim 10, wherein the tissue culture is [regenerated] produced from cells or protoplasts of a tissue selected from the group consisting of seeds, leaves, stems, pollens, roots, root tips, anthers, ovules, petals, flowers[,] and embryos[, fibers and bolls].

Claim 22 has been cancelled.

Substance of the Interview

2. The Examiner spoke with Applicant's representative, Martin Moynihan, December 28, 2005 with regard to the above claim amendments. The above claim amendments now place the application in condition for allowance.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith O. Robinson, Ph.D. whose telephone number is 571-272-2918. The examiner can normally be reached on Monday - Friday 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

4. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Keith O. Robinson, Ph.D.

December 28, 2005

DAVID H. KRUSE, PH.D.
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read "David H. Kruse", written in a cursive style.